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March 9, 2012

Ontario Energy Board *16/3/12*
P.O. Box 2319
27th Floor
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Toronto ON M4P 1E4

2012-0048

OEB BOARD SECRETARY	
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Panel	<i>MH PS</i>
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Other	<i>KS</i>
00/04	

Attn: Kirsten Walli, Board Secretary

RE: EB-2012-0048 UNION GAS ST. CLAIR LINE DEFERRALS

Please find attached the submissions of the Federation of Rental-housing Providers of Ontario (FRPO) in the above proceeding. We are appreciative of the Board's indulgence in the timing of these submissions and trust they will aid the Board in these matters.

Respectfully Submitted on Behalf of FRPO,



Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD.

c. C. Ripley - Union Gas
V. Brescia

IN THE MATTER OF
the Ontario Energy Board Act 1998, S.O. 1998, c.14, Schedule B,
and in particular, section 36(2) thereof;

AND IN THE MATTER OF
an application filed by Union Gas Limited for an Order or Orders
approving closure of Deferral Account 179-121 and Deferral Account 179-122
as of April 1, 2012.

SUBMISSIONS OF

FEDERATION OF RENTAL-HOUSING PROVIDERS OF ONTARIO (FRPO)

SUBMITTED

MARCH 9, 2012

Introduction

The Federation of Rental-housing Providers of Ontario (FRPO) has been an active participant in the multiple proceedings that have looked at the Leave to Sell the St. Clair Lines (EB-2008-0411), the Leave to Construct Dawn-Gateway (EB-2009-0422) and the subsequent implications of a deferral and eventual cancellation of the project (EB-2010-0039). We trust that the Board is sufficiently informed on the proceedings and will only draw from those proceedings certain aspects which in, our view, are pertinent to the decision of an equitable closure of this chapter of regulatory history and the specific deferral accounts that are the subject of the instant proceeding EB-2012-0048.

In this proceeding, Union is requesting the Board's approval for their proposed method of closing Deferral Accounts 179-121 and 179-122 contained in their application.¹ The following are the submissions of FRPO in respect to the required closure and in response to Union's proposed method.

Our Main Premise

- 1. In our submission, through the course of events in these proceedings, Union Gas Ltd. and its parent company Spectra's representatives (collectively as Union unless specific reference where noted), have consistently attempted to advantage shareholders' interests over ratepayers' interests. Further, in our view, the proposal to close these deferrals accounts, originally established to provide relief for the**

¹ EB-2012-0048 Union Gas Application, dated January 30, 2012

ratepayer harm of Union's initial application², is designed to continue to advantage the shareholder over the ratepayer. Upon establishing this pattern from the history of the recent St. Clair Line proceedings, we will urge the Board to order a more equitable closure of the deferral accounts.

Shareholder Interest over Ratepayer Interest

2. In the original Leave to Sell Application³, Union presented the case of a systemically under-utilized pipeline that could only realize increased value as part of a joint-venture, integrated pipeline system to become known as Dawn Gateway. Union Gas' parent Spectra and Michigan energy company DTE were named as the owners of the expected Dawn Gateway JV. The application stated that the agreed to purchase price by Spectra and DTE was the book value of the pipe at the time of transaction (approximately \$5.2 million).⁴
3. Union's position in favouring the shareholder over the ratepayer was evident throughout the proceeding but was highlighted by the proposed price of sale. The application noted that there would be no material impact on ratepayers; only a small reduction of less than \$1 per year at the time of rebasing.⁵ In support of the ratepayer benefit of its proposed sale price, Union Gas produced a valuation report that reported the value of the assets as between \$1.6M to \$2.0M⁶, far less than the book value. However, as came to be

² EB-2011-0411 Decision date?

³ EB-2008-0411 Leave to Sell St. Clair Line Application, submitted December 23, 2008

⁴ EB-2008-0411 Leave to Sell St. Clair Line Application, paragraph 43

⁵ EB-2008-0411 Leave to Sell St. Clair Line Application, paragraph 45

⁶ EB-2008-0411 Leave to Sell St. Clair Line Application, Exhibit K1.5

discovered throughout the process of that hearing, the assets were worth much more. As the process to uncover the facts is on the record, we will not walk through the number of times Union took the position that the sale of the pipe at net book value was fair to ratepayers. We will only emphasize the Board's decision that required Union to provide additional compensation to ratepayers that was more than double the proposed sale at net book value⁷.

4. As a result of the decision to provide ratepayers relief from the proposed sale and to account for the assets while awaiting the expected finalization, the Board order the establishment of Deferral Accounts 179-121 and 179-122. The portion of the decision that deals with the Effect of Removing the St. Clair Line from Rates read:

The Board finds that the net book value and associated expenses should be removed from rate base and rates as of March 1, 2010, so as to coincide with the deemed transaction date. The Board directs that the reduction in the revenue requirement going forward from that date will be captured in a deferral account for later disposition to ratepayers. The underlying rates will also be adjusted in due course.⁸

5. Through the course of the Dawn Gateway Leave to Construct⁹ proceeding, especially the Oral Hearing Portion, Union pushed for an expedited process and decision primarily to preserve a critical pipe order date of March 11, 2010¹⁰ that impacted the November 1, 2010 in service date. Even when challenged on the criticality of this date, Union represented that there were no viable alternatives¹¹. With the ink barely dry on the March

⁷ EB-2008-0411 Decision, dated March 2, 2012

⁸ EB-2008-0411 Decision, dated March 2, 2012, paragraph 52

⁹ EB-2009-0422

¹⁰ EB-2009-0422 Transcript, Volume 1, page 8, lines 4-9

¹¹ EB-2009-0422 Transcript, Volume 1, page 185, line 17 to page 187, line 24

9, 2010 decision, granted within a week of the oral hearing¹², DTE¹³ received a call from one shipper who was concerned about the project on March 10, 2010 and the pipe order was terminated March 11, 2010¹⁴. Immediately after that date, Union Gas went out for another RFP and found another mill that gave them a similar deal with a free cancellation up until April 8, 2010.¹⁵

6. In that time frame, starting March 10, 2010, Dawn Gateway set about an expedited process to determine interest from shippers in amending the agreements.¹⁶ Union's preference for shareholder interest over ratepayers was again evident in their approach. The chosen approach to amend the agreements was to negotiate with four shippers and excluded Union Gas because they would have been perceived as having a bias.¹⁷ This step was consciously taken in spite of the fact that Union was clearly aware of the ratepayer harm impact¹⁸ and that Union's representative attended the eventual meeting to determine if the agreements would be amended¹⁹ but was clearly conflicted. As a result, Union Gas' ratepayer interests in creating certainty of divestiture and regaining past under-recoveries were not represented. In addition, the ratepayers interests in obtaining additional security of supply and a positive impact on gas prices as represented by Union Gas in the Ontario Natural Gas Market Review 2010²⁰ were silenced.
7. The resulting contractual arrangements and prevailing market conditions resulted in the project being cancelled. But before that occurred, Union's concern for its shareholder

¹² EB-2009-0422 Decision, March 9, 2010

¹³ EB-2010-0039 Union Motion Transcript, Volume 1, April 6, 2011

¹⁴ EB-2010-0039 Union Motion Transcript, Volume 1, April 6, 2011, page 54, lines 17-24

¹⁵ EB-2010-0039 Union Motion Transcript, Volume 1, April 6, 2011, page 73, lines 3-8

¹⁶ EB-2010-0039 Union Motion Transcript, Volume 1, April 6, 2011, page 75-77

¹⁷ EB-2010-0039 Union Motion Transcript, Volume 1, April 6, 2011,

¹⁸ EB-2010-0039 Exhibit B3.17, Attachment #1

¹⁹ EB-2010-0039 Exhibit B3.17, Attachment #2

²⁰ EB-2010-0199 Ontario Natural Gas Market Review, Union Submissions

interests prompted a Motion for Declaratory relief²¹ to establish the impact on the shareholder should the project not be completed. This final step of shareholder interest primacy resulted in ratepayers recovery in past under-recoveries of the St. Clair Line being tied directly to a sale that was then unlikely to occur.²² However, in our view, it was not the end of ratepayers interests being subordinated to those of the shareholders in this saga.

Proposal to Close the Deferral Account 179-122 and Return the Asset to Rate Base Favours the Shareholder

8. The Board's final decision in the Leave to Sell Application ordered the creation of a deferral account to track the rate impact of notionally pulling the assets out of the utility while it awaited the final sale transaction. The chronology of events, only touched on above, have led the process to the point that may not have been completely contemplated by all when the deferral account was created. Now, having viewed Union's evidence on the proposed closure methodology, we submit that the interest of the shareholders over the ratepayers is evident again. In our view, it is analogous to the shareholder having borrowed a limited life asset while the ratepayers paid the rental, then sublet the asset to others for additional rentals and the shareholder proposes to keep all rents for themselves. Further, at the end of the time of borrowing, the shareholder now wants to put the asset back as if it were never used.

²¹ EB-2010-0039 Union Motion seeking Declaratory Order in Respect of Deferral Accounts No. 179-121 and 179-122

²² EB-2010-0039 Union Motion seeking Declaratory Order, Decision dated May 25, 2011

9. From paragraph 4 above, the Board ordered that "*the reduction in the revenue requirement going forward from that date will be captured in a deferral account for later disposition to ratepayers*" (emphasis added). Line 10 (i) and (j) of Exhibit A2.2 shows the revenue requirement of the St. Clair Line, net of adjustments for unaccounted for gas and fuel gas for the period the Asset was in the Held for Sale Account.²³ The total of the two figures is \$2.2 million which corresponds to the balance closed to Operating Revenue in Deferral Account 179-122 provided to Board staff in Exhibit A1.2. Union has closed that Account to Operating Revenues. With Union's forecast for 2011 ROE being below the 200 pt. threshold²⁴, none of the \$2.2 million of Operating Revenue will be shared with ratepayers.
10. In what would appear to be a "compensating move", Union has reversed its practice on the treatment of revenues from the St. Clair Line in 2011. In answer to FRPO IR 1, Union provided that it did not include the revenues from the line in utility revenues in 2010 because it thought the sale would proceed. However, even though the Asset was in the Held for Sale account for all of 2011, Union has decided that the \$1.455 million of revenue would be included in utility earnings.²⁵ Once again, though, with aforementioned 2011 earnings being insufficient to trigger a sharing with ratepayers, the shareholder would end up pocketing this revenue also.
11. The practical effect of Union's proposal to close the Deferral Account and its selective channelling of revenue results in the shareholder retaining all of the contribution by ratepayers embedded in rates while the Asset was Held for Sale and the revenue

²³ Exhibit A note 2 stipulates the revenues are net of unaccounted for gas and excluding compressor fuel

²⁴ EB-2011-0210 Union Gas 2013 Re-basing Evidence Exhibit F

²⁵ Exhibit A4.1

generated by the asset while it was in that state. And in their proposal to put the St. Clair Line back into Rate Base, they have proposed that the value be restored to its original value when it was removed from Rate Base as if it had never been used.²⁶

12. We firmly and respectfully believe that the inequitable result of Union's proposal is not what the Board intended when it directed Union to set up Deferral Accounts to facilitate the sale and prevent ratepayer harm. However, in our view, it is continuation of the common theme of shareholder interest primacy as seen in these issues around the St. Clair Line and the recent Union Gas deferral account proceeding where the Board rejected Union's scheme of hurdle rate and return on purchased services to reward shareholders over ratepayers.²⁷

A More Equitable Closure of This Chapter is Needed

13. We respectfully submit that if the St. Clair Line was sold, Deferral Account 179-122 would have been closed out in favour of ratepayers as the Board had originally intended. The revenues generated over that time would have been kept by the non-utility as they would have accepted the costs of the assets and the interim and ongoing cost responsibility for the Line. The fact that the Line is coming back to utility responsibility does not logically predict that the revenues and costs should now come back to the discretion of the utility who has demonstrated its preference of stakeholder interests.
14. **At a very minimum, we would respectfully urge the Board to order that Union compensate ratepayers an amount equal to the revenue requirement of the St. Clair**

²⁶ Exhibit A1.3

²⁷ EB-2011-0038 Decision dated

Line while it was used as a non-utility asset (approximately \$2.2 million), as it originally intended, with no Earnings Sharing treatment of the proceeds. This approach would correct a potential omission in the design of relief for an asset that was held (and used) outside of utility operations during the IRM period. We believe this is consistent with the Board's original intent to be fair to ratepayers. This compensation could be ordered at this time, with implementation as part of the 2011 deferral account proceeding or Union's 2013 Rebasing Application. In this minimalist view, Union's shareholder has already been more than compensated for "holding and operating the asset" as they would keep the revenues generated from the Line during that time. To ensure it is recognized the Asset has been used and useful while being Held for Sale, we would recommend the asset be placed back into Rate Base net of the depreciation that would normally have arisen as calculated in Exhibit A2.2.

15. We were privy to CME's development of submissions in this case. As usual, Mr. Thompson has constructed a more legally, eloquent argument. We find his characterization of Union being "contributorily causative" to be compelling and consistent our views expressed above. We would also join CME in a call for the Board to consider the actions of Union's management in determining the appropriate compensation for the action's of Union management in preferring the interests of shareholders over the interests of its ratepayers.

16. We respect that in the Decision on the Declaratory Relief proceeding, the Board stated

Nothing in this Decision shall be construed so as to prevent or inhibit parties from asserting that some remedy or consideration arising from the underutilization of

*the assets may be considered by the Board in subsequent cost of service rate proceedings.*²⁸

CME has submitted the argument that the revenues from the St. Clair Line through the end of 2012 ought to be returned to ratepayers as part of the compensation for the actions of Union's management in preferring the interests of Union's owner over the interests of its ratepayers. As a possible more comprehensive approach, the Board could order both the revenue requirement as we submit and incremental revenues through 2012 as recommended by CME be returned in total to ratepayers as part of Union's 2013 Rebasing Application.

Costs

17. We respectfully submit that the Federation of Rental-housing Providers of Ontario has acted responsibly in its intervention in this matter and respectfully requests that it be awarded 100% of its reasonably incurred costs in connection with this matter.

All of which is respectfully submitted on behalf of FRPO,



Dwayne R. Quinn
Principal
DR QUINN & ASSOCIATES LTD

²⁸ EB-2010-0039 Union Motion seeking Declaratory Order, Decision dated May 25, 2011